CHAPTER XXIX.

LITIGATION.

The litigation in which Government is engaged chiefly takes the form of the defence of suits brought against the Collector for carrying out the orders of Government. Suits of this sort are very common in this Presidency, though in some districts much more so than in others, the difference depending chiefly on the influence of the vakils and partly also on the known idiosyncracies of district Judges. About 1872 the great increase in the litigation in which Government was concerned led to new arrangements being made, the result of which will be found in order 8 of this chapter.

A Legal Remembrancer was first appointed in this Presidency in 1842, "for the purpose of superintending the conduct of all original suits in the Mofussil Courts, and appeals to the Sadar Diwáni Adálat and the Queen in Council, to which Government may be a party either as plaintiffs or defendants."—(*G. R. No.* 1322, *June* 16, 1842.)

In every collectorate there is a Government Vakil who ordinarily has charge, under the orders of the Collector, of all suits brought by or against Government in the District Court, and who is also generally the public prosecutor of the district.

Act X. of 1876 contains some important provisions as to suits against Government.

1. **Principles.**—"There is to be no misunderstanding as to the views and wishes of the Government of India with respect to litigation in which the Government is concerned. In many parts of India the union of judicial with executive functions in one chief officer of a district is still, and may long be, inevitable; and His Excellency in Council trusts that all officers who exercise this double power realize the responsibility which it throws upon them for scrupulous observance of equity in all suits to which the Government which they serve is a party. To lean towards technical pleas in favor of Government, or towards technical obstacles against a

suit which the Government defends, whenever such pleas or obstacles merely hinder a decision on the merits—to strain laws for the advantage of Government—all these things would be exactly contrary to the rule of judicial conduct which in such cases the Government desires to impose. And all officers are to understand that the interests of Government are most effectually promoted by sedulously upholding this high standard of entire impartiality."—*G. of I. No.* 832, *May* 14, 1873, *and G. R. No.* 963, *Feb.* 21, 1876.

2. All officers must obtain the authorization of the Government to which they are immediately subordinate, before having recourse to the Courts, for vindication of their public acts, or their character as public functionaries from defamatory attacks. This order does not affect an officer's right to defend his private dealings or behaviour in any way that may to him seem fit; but his official reputation is in the charge of the Government which he serves.—*G. of I. with G. R. No.* 214, *Jan.* 22, 1874.

3. **Confidential reports.**—It should be clearly understood that all opinions and advices given by the law officers of Government for the conduct of the law business of Government, are strictly confidential.—*G. R. No.* 1560, *March* 27, 1878.

4. **Legal Remembrancer.**—

I.—Institution of Suits on behalf of Government.

Report to be submitted before a suit is instituted.

Any officer wishing to institute a suit shall submit a clear and detailed report, through the ordinary channel of communication, to the Head of his Department, showing:

(*a*) the circumstances which render the suit necessary;

(*b*) the exact nature of the claim for which it is to be brought;

(*c*) the steps, if any, which have been taken to obtain satisfaction of the claim without bringing a suit;

(*d*) what objection or excuse, if any, the defendant has urged against the claim;

(*e*) the evidence, both oral and documentary, which it is proposed to adduce in support of the claim; and

(*f*) the evidence which, so far as is known, the defendant will be able to adduce in his defence.

Rules for Institution of Suits in Mofussil Courts.

All documents relied upon, and all the correspondence and written proceedings, whether in English or in the Vernacular, connected with the proposed suit, should accompany the report.

Solvency of defendant to be inquired into.

2.—It should be stated in the report whether or not the circumstances of the person against whom it is proposed to institute the suit are such as to render it likely that execution will be obtained of any decree that may be given against him.

The probability of the recovery of a sum at least equal to the costs should be ascertained before recommending the institution of any suit, unless, for reasons which should be explained, it is considered that the suit should be brought, notwithstanding that recovery of costs is doubtful.

Report to be referred by Head of Department to the Legal Remembrancer.

3. The Head of the Department, if he thinks that all the necessary preliminary steps have been taken, and that there is *primâ facie* sufficient cause for the institution of a suit on behalf of Government, shall refer the report with his opinion to the Remembrancer of Legal Affairs.

Legal Remembrancer's duty on receipt of report.

4. The Remembrancer of Legal Affairs will then thoroughly inform himself of the whole of the circumstances, calling for such further information, or additional papers, as he thinks necessary, and report his opinion to Government in detail as to the advisability of instituting a suit.

The report of the officer who proposed the institution of the suit and the opinion of the Head of the Department should accompany the report of the Remembrancer of Legal Affairs to Government; but the rest of the papers should be retained by the Remembrancer of Legal Affairs pending the orders of Government, unless for any reason he deems it necessary that any of them should be laid before Government.

Papers to be recorded in the Legal Remembrancer's office.

5. The report of the officer who proposed the institution of the suit and all other documents accompanying the report of the Remembrancer of Legal Affairs

to Government will be returned to him with the order of Government for record in his office.

Preparation of plaint.

6. If the institution of the suit be sanctioned, a draft of the plaint will be prepared by the Government Pleader of the district in which the suit is to be instituted, in consultation with the officer who proposed its institution, and will be submitted by him direct to the Remembrancer of Legal Affairs for approval.

II.—Defence of Suits.

Notices of actions how to be dealt with.

7. Section 424 of the Civil Procedure Code requires that suits against Government or Government officers should be preceded by a notice to be left either with a Secretary to Government, or with the officer concerned. When a notice of this kind is received by a Secretary to Government it will be at once forwarded to the officer principally concerned in, or cognizant of, the matter respecting which an action is threatened.

The officer receiving any such notice, whether from a Secretary to Government or direct from the complainant, should give it immediate and careful attention. The complainant should be desired, when his complaint is vague in the statement of the alleged right of the alleged infringement of this right, or of the officer whose acts are impugned, to set these points forth succinctly and clearly, as the most effectual means towards obtaining such relief as may properly be given. Should it prove impossible to obtain a lucid and definite statement of the complainant's case in this way, he should be examined orally as to all important points, and his answers should be taken down in writing, and verified by his signature or by a memorandum that the paper was read over to the complainant and assented to by him. The documents above referred to should in every case be carefully preserved, together with any that the complainant may produce in support of his claim or complaint.

Examination of the grounds of complaint.

8. The conduct or act complained of may have been either (1) wholly indefensible, (2) justifiable, or (3) of a mixed or doubtful character. In every case the officer receiving the notice should endeavour, without prejudice, to determine to which of these classes it is to be assigned.

Rules for Institution of Suits in Mofussil Courts.

If it is indefensible, it is his duty to do what lies in his power to give immediate redress, or to obtain it by a full report to the proper authorities.

If the complaint is plainly groundless or if the threatened action is one which must undoubtedly be defended, if it is brought, no further notice need be taken of the complaint, but the officer concerned should at once proceed, as far as possible, to collect the information and papers which will be afterwards required under Rules 11 and 12.

The chief difficulty arises in the third class of cases; and in these the officer receiving the notice should use every possible effort to distinguish between acts which have been properly done in the discharge of a public duty and those in which, through carelessness, ignorance, or imprudence, some real cause for complaint has been given. Such analysis will, in the majority of cases, reduce these acts under one of the two heads already considered, and they should then be dealt with accordingly. Where there is a doubt as to the real intention of the Government or of a superior authority in any order, the carrying out of which has occasioned the complaint, that doubt should be cleared up by an immediate reference. When there is a doubt as to the legality of the act complained of, though in apparent fulfilment of a rule or order, issued by a superior authority, a clear statement of the case should be submitted for orders to be issued after the opinion of the law officers shall, if necessary, have been obtained.

Pending references in cases falling under either the first or third head, the complainant should be informed that some delay is requisite for the proper disposal of his complaint, and, when instructions have been received, he should be at once informed of what is to be done; but every endeavour should be made to have the matter disposed of within the period of two months from the delivery of the notice allowed by the Civil Procedure Code before the threatened action can be instituted.

Preliminary steps when summons is served on Government Pleader.

9. When a suit has been instituted, if it is against Government, and the summons is therefore served on the Government Pleader, he shall *at once* procure an *uncertified* copy of the plaint and for-

ward it and the copy of the summons received by him (with the date of its receipt by him noted on the back) to the officer who himself, or by his subordinates, is alleged to have given rise to the plaintiff's cause of action.

If the plaint relates to the acts of two or more officers, the Government Pleader shall communicate as above with the principal of such officers.

Preliminary steps when summons is served on an officer personally.

10. If, owing to the suit being against an officer in his official capacity, the summons is served on that officer personally, he shall *at once* forward a *rakálatnáma* to the Government Pleader (unless the Government Pleader already holds a general power of attorney from him), and procure from him an *uncertified* copy of the plaint.

Officer concerned to collect information.

11. The officer to whom the Government Pleader refers under Rule 9, and any officer who is sued in his official capacity, and who desires that Government should undertake the defence of the suit, shall collect, with the least practicable delay, all the information regarding the facts of the case which he can procure.

Papers to be submitted to Head of Department.

12. He is then, within one month from the date of his being first apprized of the institution of the suit, to submit the following papers, through the ordinary channel of communication, to the Head of his Department (namely):—

(*a*) a copy of the plaint in the vernacular;

(*b*) a translation of the same into English, on half margin, the more important of the statements therein being distinctly marked with letters (*a*), (*b*), &c., and notes being added in the margin stating whether such statements are correct or not, and if not, in what respect they are inaccurate: (when the requisite explanation cannot be thus compressed, reference should be made to the para. of the accompanying statement in which the matter should be fully discussed);

(*c*) a full and detailed statement (1) of the circumstances which led to the suit, (2) of the course which it is proposed to adopt, namely, whether to admit, compromise, or defend the suit, and of the reasons for the same, and (3) if it is proposed

to defend the suit, of the grounds on which it is proposed to base the defence, and of the evidence to be adduced;

(*d*) if the case turns on documentary evidence, copies of the documents (or the originals) relied on by the plaintiff (if procurable) and by the defence;

(*e*) all the correspondence and written proceedings, whether in English or in the Vernacular, connected with the subject-matter of the suit.

The forwarding report should state distinctly (1) the number of the suit, (2) the date on which, and the Court in which, it was instituted, (3) the names of all the parties, (4) the amount or value of the claim, (5) the date fixed by the Court for the first hearing, and (6) whether notice of the action has been given under Section 424 of the Civil Procedure Code, and if so, the date of delivery of such notice.

Applications for adjournments pending receipts of orders.

13. If the suit is against an officer in his official capacity he shall instruct the Government Pleader to move the Court, from time to time, to grant an extension of the time for hearing the claim, under Section 423 of the Civil Procedure Code, until the orders of Government are received. In the case of suits against Government, the Government Pleader shall make the necessary applications to the Court for time, under Section 420 of the Code, without express instructions. If in any instance the Court is likely to decline to grant further time, it is the duty of the Government Pleader to inform the officer concerned in the defence of the suit, and in emergent cases, the Remembrancer of Legal Affairs.

Procedure when two or more officers are jointly concerned in a suit.

14. If two or more officers belonging to different departments are sued conjointly, or if the plaint in a suit against Government relates to the acts of two or more such officers, they should, with the least possible delay, communicate one with the other, and after, if possible, mutual consultation with a view to a common line of defence, arrange for the preparation of a joint report. When a joint report is not sent, a separate report should be submitted simultaneously by each officer, care being taken by the officer

principally concerned that all the requirements of Rule 12 are complied with.

Applicability of Rules 3, 4 and 5.

15. The provisions of Rules 3, 4 and 5, relating to the institution of suits on behalf of Government, shall apply, *mutatis mutandis*, to reports submitted under Rule 12.

Duty of Government Pleader when defence of suit is sanctioned.

16. If the defence of a suit against Government is sanctioned, or if Government undertakes the defence of a suit against an officer in his official capacity, the written statement to be filed in answer to the plaint shall be subscribed and verified by the Government Pleader whose duty it is, under Sections 420 and 426 of the Civil Procedure Code, to "answer to the plaint," and in the case of a suit of the latter class the Government Resolution sanctioning the defence is to be deemed to be the Government Pleader's "authority to appear and answer to the plaint," and he shall at once, on receipt thereof, move the Court to cause a note of his authority to be entered in the register, but shall not produce such Resolution in Court.

Preparation of defence.

17. The written statement and the issues sought on behalf of Government are ordinarily to be in strict accordance with the opinion of the Remembrancer of Legal Affairs so far as concurred in by Government; but the Government Pleader is responsible, in communication with the officer concerned in the suit, for the correctness and exhaustiveness of the details of the defence.

III.—Conduct of Suits.

Government Pleader's duties whilst a suit is under trial.

18. The responsibility for the conduct of a suit in accordance with the opinion of the Remembrancer of Legal Affairs so far as concurred in by Government, shall rest with the Government Pleader, unless special counsel is appointed on behalf of Government; and it is the duty of the Government Pleader, during the progress of the suit, to consult the Remembrancer of Legal Affairs on all matters connected with it as to which he experiences any difficulty, or doubt, and especially in respect of any interlocutory order made by the Court, or any application of the opposite party which seems to require particular instructions.

Rules for Institution of Suits in Mofussil Courts.

If special counsel is appointed, it is the duty of the Government Pleader, subject to the orders of the Remembrancer of Legal Affairs, to instruct him, and, when necessary, to prepare his brief, and generally to aid him in the conduct of the case.

Collector or other officer to furnish information and prepare evidence.

19. In cases connected with the departments under the control of the Collector and Magistrate of the district, it is his duty, or that of any subordinate whom he may specially depute for the purpose, and in cases connected with any other department, it is the duty of the officer who proposed the institution, or who sought the sanction of Government for the defence of the suit (as the case may be), to ascertain that the Government Pleader, or special counsel, is thoroughly acquainted with the facts of the case, and with the evidence to be adduced in support of the claim, and to see that the necessary evidence, whether oral or documentary, is ready by the proper time. The Government Pleader must keep the Collector, or other officer, informed on all points on which his co-operation is necessary, and report, with the least possible delay, if any further evidence, or information, is required, moving the Court, if necessary, from time to time to postpone the case, or adjourn the hearing.

An officer to be present at the trial to aid the Government Pleader.

20. When a suit is under trial, some intelligent officer thoroughly conversant with the facts of the case should be deputed to be present to instruct the Government Pleader as to the truth concerning matters which arise unexpectedly and to direct his attention to the documents, or other evidence, that may become important at each stage of the trial. In important cases, and in *every* case in which special counsel is retained, an Assistant or Deputy Collector, or an officer of similar rank, should be deputed for this purpose.

Settlement of differences of opinion.

21. Should there be a difference of opinion between the Government Pleader or special counsel and the Collector or other officer, at whose desire the suit has been instituted or defended, as to the manner of conducting the case, or should the opinion of the Remembrancer of Legal

Affairs prove unintelligible on any point, or open to objection, the Remembrancer of Legal Affairs shall at once be communicated with in order that the difficulty may be settled. Should there eventually be an irreconcileable difference of opinion between the Collector or other officer and the Remembrancer of Legal Affairs, a reference shall forthwith be made by the latter to Government.

Important points respecting the conduct of suits.

22. The following important points relating to the conduct of all suits should be carefully attended to by Government Pleaders and all officers concerned, (namely):—

(*a*) the averments in a plaint, or in a written statement, should generally be based in every material point on the proof which can be adduced in support of them;

(*b*) the evidence, whether oral or documentary, on which if is intended to rely, should be carefully scrutinized by the Government Pleader *before* it is adduced, and he should advise as to its admissibility, and probable importance, or unimportance for the purposes of the suit, and suggest what evidence, if it be forthcoming, may with advantage be substituted for that which, in his opinion, would be weak or inadmissible;

(*c*) all the available evidence should be assiduously collected and made ready for the day fixed for its reception, and the necessity of making applications for adjournment should, as much as possible, be avoided, and such applications on behalf of the opposite party should, unless they are made for sufficient reasons, be resisted as tending to prolong the litigation, and to give opportunities for the fabrication of false evidence;

(*d*) all documentary evidence should be ready and be produced at the first hearing of the suit (*i.e.*, the day fixed for the settlement of issues), as required by Section 138 of the Civil Procedure Code, and when a suit is instituted, the documents sued upon should be produced in Court when the plaint is presented, together with copies thereof, as required by Sections 59 and 62 of the Code, and the list of other documents relied upon as evidence, which is required by Section 59 to be annexed to the plaint, should be very carefully prepared. Applications to the Court to accept any document in evidence at any subsequent stage of the trial should, unless under special circumstances, be avoided, as such applications cannot be

granted without the grant of similar indulgence to the opposite party, which may place Government at a disadvantage, and should be resisted, as holding out a temptation to forgery;

(*e*) documents filed by the opposite party should be carefully examined at the earliest opportunity, and compared with originals in the Government records, or with other papers which tend to establish, or subvert, their authenticity;

(*f*) the *production* of documents in the possession of Government or of any Government Officer, when lawfully required by the Court, or by the opposite party, should not be resisted unless for good and sufficient reasons, such as are recognized by law; but the question of the *admissibility* of the documents, when produced, should be carefully considered, and argued, it being borne in mind that the opinions of individual officers contained in official correspondence (which is so often called for by persons engaged in litigation with Government in order to establish their case) are, as a rule, *not admissible* in evidence;

(*g*) the object of Government in sanctioning either the institution, or defence, of any suit is simply to establish the truth; and whilst Government expect the utmost vigilance and care on the part of those entrusted with the conduct of litigation on their behalf in asserting and protecting their just interests, they would impress upon pleaders who have the charge of cases that they will not countenance any attempt to snatch an unfair advantage by the withholding of important evidence, or by any disingenuous proceeding whatever.

Decision to be reported at once by Government Pleader.

23. As soon as a suit is decided, the Government Pleader shall communicate the nature of the decision to the Collector, or other officer concerned, giving, in important or interesting cases, a brief statement of the grounds thereof. A duplicate of the Government Pleader's report shall be at once forwarded by him direct to the Remembrancer of Legal Affairs.

Government Pleader to obtain and forward copies of judgment and decree.

24. The Government Pleader shall then obtain with as little delay as possible two copies, one certified and the other uncertified, of the Court's judgment, and one certified copy of its decree.

The certified copies of the judgment and decree he shall forward to the Collector or other officer concerned; the uncertified copy of the judgment he shall forward to the Remembrancer of Legal Affairs direct.

Procedure when decision is entirely in favour of Government.

25. If the decision is entirely in favour of Government, the copies may be forwarded by the Government Pleader according to the last rule without comment, and the Collector or other officer shall communicate the result of the suit to the Head of his Department, sending him a copy of the judgment, or not, as under the circumstances of the case he thinks fit. The result need not be communicated by the Head of the Department to Government unless he is of opinion that for special reasons it is desirable to do so, in which case he shall submit his report to Government through the Remembrancer of Legal Affairs.

The general results of all litigation will be communicated to Government by the Remembrancer of Legal Affairs in his annual report.

IV.—Appeals.

In case of adverse decision Government Pleader to report whether he recommends an appeal.

26. If the decision is either wholly or partially adverse to Government, the Government Pleader, when forwarding copies of the decree and judgment to the Collector or other officer concerned, shall state his opinion, with reasons, as to whether an appeal should be brought.

Collector or other officer to report to the Legal Remembrancer.

27. The Collector or other officer, after perusing the judgment, shall call upon the Government Pleader to send him uncertified copies of such of the exhibits recorded in the case as he deems necessary to explain the grounds of the decision so far as it deals with the merits of the case (or, in important cases, of *all* the material exhibits), and shall forward them, together with the certified copies of the judgment and decree already received from the Government Pleader, with a report, stating his opinion as to whether the decision should be acquiesced in or appealed against, direct to the Remembrancer of Legal Affairs.

Rules for Institution of Suits in Mofussil Courts.

28. This report must be despatched so as to reach the Remembrancer of Legal Affairs within *fifteen days* after the date of the decree, in cases in which an appeal lies to the District Judge, and within *one month* after the said date, in cases in which an appeal lies to the High Court.

Time within which report must be made.

29. A copy of the report shall be sent simultaneously to the Head of the Department, who, if he concurs in it, will merely file it, but if he differs from it, or considers it otherwise necessary to address Government on the subject of it, shall submit a separate report on it without delay to Government through the Remembrancer of Legal Affairs.

Duty of Head of Department.

30. The Remembrancer of Legal Affairs, after calling for such further information, or additional papers, as he thinks necessary, shall report his opinion to Government as to whether an appeal should be made, or not, or as to what other course should be pursued. His report must be despatched in time to enable the orders of Government upon it to be acted upon, if necessary, within the period prescribed by law for filing an appeal.

Legal Remembrancer to report to Government.

The report of the Collector or other officer, and, if any have been received, that of the Head of the Department also, should accompany the report of the Remembrancer of Legal Affairs to Government; but the rest of the papers should be retained by the Remembrancer of Legal Affairs pending the orders of Government, unless for any reason he deems it necessary that any of them should be laid before Government.

31. The report of the Collector, or other officer, and of the Head of the Department, if any, and all other documents which accompany the report of the Remembrancer of Legal Affairs to Government will be returned to him with the order of Government for record in his office.

Papers to be recorded in the Legal Remembrancer's Office.

32. If an appeal be sanctioned, the Collector, or other officer, will instruct the Government Pleader in the District Court, or in the High Court, accordingly, at the same time sending him a *vakálatnáma* (unless the Government

Procedure if an appeal is sanctioned.

Pleader already holds a general power of attorney from him), if the suit is against him personally. If the appeal has to be made to the District Judge, the Remembrancer of Legal Affairs will return the copies received by him, under Rule 27, to the Collector, or other officer, who shall make them over to the Government Pleader for his use in the appeal. If the appeal has to be made to the High Court, the said copies shall be sent by the Remembrancer of Legal Affairs direct to the Government Pleader in that Court, and it shall be the duty of the Collector, or other officer, in consultation with the District Government Pleader, to send to the Government Pleader in the High Court, with the least practicable delay, copies of all the remaining material exhibits and other papers connected with the suit for his information and guidance.

Preparation of memorandum of appeal.

33. Appeals are ordinarily to be based strictly on the grounds recommended by the Remembrancer of Legal Affairs and concurred in by Government; but when an appeal is sanctioned generally against a decision, the Government Pleader is responsible for availing himself of all legitimate grounds on which the decree may be open to objection, notwithstanding that any of them may have escaped the notice of the Remembrancer of Legal Affairs, or not have been mentioned by him.

In important or intricate cases the memorandum of appeal should be submitted to the Remembrancer of Legal Affairs for approval before being filed in Court.

Procedure when an appeal is brought by opposite party.

34. If an appeal is brought by the opposite party against a decision either entirely, or partly, in favour of Government, a notice of the appeal will be served by the Court either on the Government Pleader or on the officer concerned. In the former case the Government Pleader shall at once obtain an *uncertified* copy of the memorandum of appeal, and forward it and the notice received by him (with the date of its receipt noted on the back) to the Collector or other officer concerned, or to the principal of the officers concerned. In the latter case the officer concerned shall at once send the Government Pleader a *vakálatnáma* (unless the Government Pleader already holds a general power of attorney from him), and obtain from him an *uncertified* copy of the memorandum of appeal.

Rules for Institution of Suits in Mofussil Courts.

35. The Collector or other officer concerned shall then carefully compare the grounds of appeal with the Court's judgment, and after consultation, if necessary, with the District Government Pleader, report his opinion as to whether the appeal should be defended, and make any explanation or remarks that may be needed with reference to the grounds of appeal. His report should be submitted to the Head of his Department, and be accompanied by the same documents as are required to accompany a report under Rule 27.

Collector or other officer to report as to the defence.

36. The Head of the Deparment shall refer the report, with his own opinion, to the Remembrancer of Legal Affairs, and the provisions of Rules 30, 31 and 32 shall then apply, *mutatis mutandis*, to the said report and its accompaniments, and to the Remembrancer of Legal Affairs with regard to his duty in respect thereof, and to the instruction of the Government Pleader, if the defence of the appeal is sanctioned by Government.

Report to be referred by Head of Department to Legal Remembrancer.

37. The provisions of Rules 18, 19, 20 and 21 apply equally to the conduct of appeals as to the conduct of original suits except—

Applicability of Rules 18, 19, 20 and 21 to appeals.

(1) that a discretion must be exercised by the Government Pleader in meeting new points raised for the first time in appeal, but that he should apply for an adjournment to enable him to advise with the officer concerned, or with the Remembrancer of Legal Affairs, if necessary, on any such points in which he may not have been fully instructed, or to which he is not able to furnish an immediate reply;

(2) that it is only necessary to depute an officer to be present to assist the Government Pleader in the High Court when express orders are received from Government to that effect.

38. When two or more officers of different departments are concerned in a case in which an appeal is desired on behalf of Government, or in which an appeal is brought by the opposite

Procedure when two or more officers are concerned in an appeal case.

party, the foregoing duties will devolve on the principal of such officers, subject, as far as may be, to the provisions of Rule 14.

Applicability of Rules 23, 24 and 25 to decisions in appeals.

39. When an appeal has been decided by a District Court, the provisions of the Rules 23, 24 and 25 shall be observed so far as they are applicable, just as in the case of the decision of an original suit.

V.—Second Appeals.

Procedure when an appeal has been decided adversely by a District Court.

40. When an appeal from an original decree has been decided by a District Court, either wholly or partially adversely to Government, the same course is to be pursued with respect to the bringing of a second appeal as in the case of an appeal from an original decree, provided that if the Remembrancer of Legal Affairs is clearly of opinion that the case is one in which the law allows no second appeal, it shall not be necessary for him to refer it for the orders of Government, and the result of the first appeal need not be communicated to Government unless the Head of the Department, or the Remembrancer of Legal Affairs, is of opinion, for special reasons, that it should be. If the Head of the Department communicates the result of an appeal to Government under this rule, he shall submit his report to Government through the Remembrancer of Legal Affairs.

Procedure when a second appeal is brought against an appellate decree in favour of Government.

41. When a second appeal is brought against an appellate decree either wholly or partly in favour of Government, the same course shall be pursued as when an appeal is brought in the High Court against a similar original decree.

High Court's decision in an appeal how to be reported.

42. When an appeal has been decided by the High Court, whether against an original or appellate decree, the Government Pleader shall communicate the nature of the decision, as soon as it is pronounced, to the Remembrancer of Legal Affairs, giving, in important or interesting cases, a brief statement of the grounds of the decision.

He shall then obtain, with as little delay as possible, two *uncertified* printed copies of the Court's written judgment, if any, and

forward one to the Remembrancer of Legal Affairs, and one, with the papers in the case, to the Collector or other officer concerned. If the Court records no written judgment, the Government Pleader shall inform the Collector or other officer to that effect and return the papers. The Collector, or other officer, shall inform the Head of his Department of the result of the case, sending him a copy of the written judgment, if any, or not, as he deems necessary.

The Remembrancer of Legal Affairs shall communicate the result of any such appeal to Government only when he thinks necessary, in special cases submitting a copy of the written judgment also, if any have been recorded; but, as a general rule, he should confine himself to mentioning the different cases and their results in his annual report. Nor need the result of any such appeal be communicated to Government by the Head of the Department unless the decision appears to him to be specially inconvenient, or to affect the administration in some unusual manner, in which case he shall forward his report to Government through the Remembrancer of Legal Affairs.

VI.—Appeals to Her Majesty in Council.

43. Applications under Chapter XLV. of the Civil Procedure Code for permission to appeal to Her Majesty in Council whether in behalf of, or against Government, shall be dealt with generally under the same rules as are applicable to appeals to the High Court.

Applications for permission to appeal how to be dealt with.

44. When the High Court has granted a certificate that a case is a fit one for such appeal, the Government Pleader in that Court shall take steps for selecting the exhibits to be included in the transcript of the record in accordance with No. VI. of the rules published by the High Court on the 23rd February 1870 (*vide Bombay Government Gazette* for 1870, p. 167), referring for instructions in all matters of doubt to the Remembrancer of Legal Affairs.

When permission has been granted, selection of exhibits for transcript of record to be made by Government Pleader.

Preparation of transcript of record to be supervised by the Government Pleader.

45. When the High Court has declared the appeal admitted under Section 603 of the Civil Procedure Code, the Government Pleader shall at once inform the Remembrancer of Legal Affairs, and, so far as permitted by the rules of the Court, shall give his careful attention to the preparation of the transcript of the record, and see that it contains copies of all the documents necessary on behalf of Government, and that it is conveniently arranged and indexed.

Statement of case to be prepared by Legal Remembrancer.

46. On receipt of intimation that an appeal has been declared admitted, the Remembrancer of Legal Affairs shall prepare a statement—

(1) embodying the facts of the case;

(2) explaining the reasons on which further prosecution of the suit is recommended;

(3) setting out the principal points insisted upon for the Government in the Courts of this country; and

(4) adding such observations upon the past conduct of the case, and upon the judgments of the Courts in this country as will conduce to an understanding and proper representation of the Government case at the hearing of the appeal.

Statement to be submitted to the Advocate General for his revision.

47. If the Advocate General has appeared in the case before the High Court on behalf of Government, the above statement shall be signed by him as well as by the Remembrancer of Legal Affairs, and shall contain their joint opinion as to the precise legal grounds on which the appeal should be argued. If the Advocate General has not appeared in the case, the Remembrancer of Legal Affairs shall forward the statement to the Solicitor to Government, who will submit it to the Advocate General for his opinion as to the soundness of the arguments relied upon for Government and for his advice generally.

Statement to be printed.

48. The said statement, together with the opinion of the Advocate General, if it is recorded separately, shall then be printed under the superintendence of the Solicitor to Government, so as to be ready by the same time that the transcript of the record is likely to be transmitted by the High Court to the Privy Council.

Rules for Institution of Suits in Mofussil Courts.

The Government Pleader shall keep the Remembrancer of Legal Affairs and the Solicitor to Government informed as to when the transcript will probably be transmitted.

Duty of Government Pleader when transcript record has been transmitted to the Privy Council.

49. As soon as the Government Pleader has ascertained that the transcript of the record has been transmitted by the High Court to the Privy Council, he shall inform the Solicitor to Government, and at the same time forward to him twenty-two printed copies of the transcript record, if the same is printed in India, under the provisions of Section 602 of the Civil Procedure Code.

Solicitor to Government to submit papers to Government for transmission to England.

50. The Solicitor to Government shall then without delay submit twenty printed copies of the transcript and of the statement (printed in accordance with Rule 48) to Government, namely, ten for the records of Government, and ten for transmission to the Secretary of State, with a view to the solicitors of the India Office being duly instructed. He shall also send one printed copy of the transcript and one of the statements to the Remembrancer of Legal Affairs for his records.

Preparation of manuscript copies when transcript of records is not printed in India.

51. If the transcript of the record is not printed in India, the Government Pleader shall apply through the Remembrancer of Legal Affairs, for the instructions of Government as to the number of the authenticated manuscript copies to be prepared, in lieu of printed copies, for the purposes of the last two rules.

VII.—Execution of Decrees.

Settlement of adverse decrees.

52. Whenever it has been determined not any further to contest a decision which is either wholly or partly adverse to Government, the Collector, or other officer concerned, shall at once instruct the Government Pleader to pay into the Court, whose duty it is to execute the decree, all moneys payable under the decree, care being taken that the decree is fully satisfied within the time fixed for its satisfaction under Section 429 of the Civil Procedure Code.

53. Immediately on a decree being given in favour of Government, the Collector, or other officer concerned, is to proceed, in consultation with the Government Pleader, to take steps for the recovery of costs and of the amount, if any, decreed, unless for special reasons (which he should report through the Head of his Department to the Remembrancer of Legal Affairs for the orders of Government), he deems it undesirable that any such steps should be taken, or that they should be taken immediately.

Procedure to obtain execution of a decree in favour of Government.

54. If an appeal is instituted, and the execution of the decree is stayed by order of the Court, the interval before the decision of the appeal should be made use of in making inquiries as to the property of the judgment-debtor.

Procedure in case of appeal.

55. When the officer concerned is not the Collector, or a subordinate of the Collector, he may apply to the Collector to assist him in prosecuting the necessary inquiries as to the property of the judgment-debtor.

Collector to render assistance when any other officer is concerned.

56. The provisions of Section 545 of the Civil Procedure Code are ordinarily sufficient to prevent any fraudulent disposal of property by the judgment-debtor during the time gained by an appeal; but the Government Pleader, in communication with the Collector, or other officer concerned, shall see that the security taken by the Court is sufficient, petitioning the Court, if he considers that the security offered is not valid, or sufficient, to be allowed to execute the decree at once.

Security when execution is stayed.

57. If such application is refused, the Collector, or other officer, should endeavour to keep a watch on the property of the debtor, so as to prevent any fraudulent alienation or concealment of it.

Prevention of fraudulent disposal of property.

58. District Government Pleaders shall send to the Remembrancer of Legal Affairs, on the 1st January, 1st April, 1st July, and 1st October, through the Collector, a quarterly return, in the following form, showing the progress made in realizing amounts

Quarterly return to be sent by Government Pleaders to the Legal Remembrancer.

due under decrees to Government in the districts to which they are respectively appointed :—

Name of Court, and Number and Year of Suit.	Parties' Names.		Amount to be realized.			Amount realized.			Balance yet to be recovered.	Remarks.
	Plaintiff.	Defendant.	Amount of Claim decreed.	Amount of Costs decreed.	Total.	Previously.	During the Quarter under report.	Total.		

In the column of remarks, any reasons for delay, or for want of progress in the recovery of dues, should be fully explained; and when any sums are considered to be absolutely irrecoverable, the Collector, or other officer, shall report the amount through the Head of his Department to the Remembrancer of Legal Affairs, who shall submit the same to Government for orders. If Government direct any such sum to be written off as irrecoverable, it need no longer be shown by the Government Pleader in his quarterly return.

Legal Remembrancer to report to Government if satisfactory progress is not made in recovery of dues.

59. Should the Remembrancer of Legal Affairs consider the progress made in the recovery of moneys due to Government under decrees unsatisfactory, he shall bring the matter to the notice of Government.

Recoveries out of Court.

60. Any sum due to Government under a decree may, if convenient, be recovered otherwise than through the agency of the Courts; but the Government Pleader should be instructed, under Section 258 of the Civil Procedure Code, to certify every such recovery to the Court.

Purchase of judgment-debtor's property for Government forbidden.

61. The practice of deputing Government servants to bid on behalf of Government at Court's auctions with a view of purchasing the property of judgment-debtors by whom money is due

to Government is, generally speaking, objectionable, as it is likely to involve Government in much litigation of a doubtful character, and it should never be resorted to unless with the special sanction of Government, to be obtained through the Remembrancer of Legal Affairs.

VIII.—Suits by Paupers.

Proceedings under Sections 408 and 414 of the Civil Procedure Code by whom to be taken.

62. Notices of the day fixed by any Court under Section 408 of the Civil Procedure Code for receiving evidence as to an applicant's alleged pauperism, and applications under Section 414 of the Code for dispaupering a plaintiff, should be respectively received and made by the District Government Pleaders in the case of any Court situated at his head-quarters, and by the Subordinate Government Pleader appointed for the Court in the case of any other Court.

Government Pleaders how to proceed under Section 408.

63. Government Pleaders need not busy themselves about calling evidence in *every* case in which a notice is served upon them under Section 408. But on receipt of any such notice they should at once communicate with the Mámlatdár or Mahálkari of the taluka or máhál in which the applicant resides.

If such officer, after inquiry, informs him that the applicant is a pauper within the meaning of Section 401 of the Code, he need take no further steps in the matter. But if such officer considers that the applicant is not a pauper, he should collect such evidence as he is able in disproof of his alleged pauperism, and instruct the Government Pleader, who will then appear on the day fixed for the hearing, and oppose the application under Section 409.

And under Section 414.

Applications to dispauper a plaintiff under Section 414 will be made by a Government Pleader only under express instructions; but it is the duty of Government Pleaders to communicate to the Mámlatdár or Mahálkari any fact which at any time comes to their knowledge which appears to render it desirable that such an application should be made.

Rules for Institution of Suits in Mofussil Courts.

"63 *A.*—As soon as a Government Pleader receives from the Court a copy of a decree* directing payment of pauper costs he shall enter the particulars thereof in a Register.

Government Pleader to keep a Register of decrees for recovery of pauper costs.

"63 *B.*—If the party liable to the payment of any such costs or his Pleader is known to the Government Pleader and is readily accessible to him, he shall endeavour to recover the amount due from him at once, and forward the copy of the decree with a report of his proceedings to the Collector.

Government Pleader how to proceed with a view to the recovery of pauper costs under a decree of Court.

If the amount due, or any portion of it cannot be thus recovered, the Government Pleader shall without delay forward the copy of the decree to the Mámlatdár of the Taluka in which the person liable for the amount due has his residence.

"63 *C.*—On receipt of a copy of a decree under the last Rule the Mámlatdár shall make inquiries as to the property and means of the person liable, and, if possible, obtain from him the amount due, or such portion thereof as he is able to pay.

Steps to be taken by Mámlatdár to whom the Government Pleader sends any such decree.

If the Mámlatdár obtains any payment either at this, or at any subsequent time, he shall inform the Government Pleader of the amount thereof.

"63 *D.*—If the Mámlatdár is unable to obtain any payment from the person liable for the same, or obtains only a portion of the whole amount due, he shall forward the copy of the decree together with all the information he is able to procure as to the property of the said person, and as to the probability of his being able to pay what is due by him, either at once or at any time thereafter within the period of limitation, to the Collector for orders.

Report when to be made by Mámlatdár to Collector.

* Note.—"Every Civil Court of Original Jurisdiction shall furnish the Government Pleader of such Court, without charge, with a copy of every decree passed by itself, or by any superior Court on appeal from a decree passed by it, which directs any party to pay pauper costs to Government."—(*High Court, under S.* 652, *Code, Civil Proc.*)

"63 *E*.—The Collector shall, thereupon, in consultation, if necessary, with the Government Pleader, issue such orders as to the making of an application in Court for the recovery of the amount due, or otherwise, as he thinks fit.

Steps to be taken by the Collector on receipt of such report.

If it shall appear altogether improbable that the person liable will be able to pay what is due by him under the decree, or the balance of what is so due by him within the period of limitation, or if for any reason the Collector shall think it inexpedient that such person should be further pressed he may at once apply to Government under Rule 58 for sanction to write off the amount still due, but as a general rule steps for the recovery of pauper costs should be unremittingly continued until the period of limitation expires, when, if necessary, application should be made by the Collector as aforesaid under Rule 58.

"63 *F*.—If the decree under which pauper costs are recoverable awards to the person liable for the same any money, or other property, the Government Pleader shall carefully watch the execution of such decree, and at the proper time enforce the prior right of Government in respect of any such money or other property.

General duties of Government Pleader in respect of the recovery of pauper costs.

It shall also be the duty of the Government Pleader at all times to furnish the Collector or Mámlatdár with any information which comes to his knowledge, the possession of which is likely to facilitate the recovery of the monies due to Government, and when the period of limitation for the execution of any decree is nearly expiring without such decree having been fully satisfied, he shall specially report the fact to the Collector.

"63 *G*.—When Government sanction the writing off of any pauper costs as irrecoverable the particulars of the Resolution shall be communicated by the Collector to the Government Pleader.

Government Pleaders' Register to be written up from time to time, and Quarterly Returns submitted under Rule 58 to contain particulars of realizations of pauper costs.

Rules for Institution of Suits in Mofussil Courts.

The Government Pleader shall make the requisite entries in columns 9—13 of the Register kept by him under Rule 63 A from time to time as he himself recovers, or obtains information of the recovery, or writing off of the pauper costs due in respect of each decree entered in the said Register.

The Quarterly Return forwarded to the Remembrancer of Legal Affairs by District Government Pleaders under Rule 58 shall show separately the progress made in realizing amounts due to Government under decrees on account of pauper costs and in realizing amounts so due on any other account, and to enable the District Government Pleaders to make complete returns, each Subordinate Government Pleader shall submit to the District Government Pleader to whom he is subordinate a return in the same form and on the same dates as are prescribed in Rule 58 for the returns to be prepared by the latter.

NOTE.—The rules relating to pauper plaintiffs and pauper costs in Bombay may be found under G. R. No. 1585, March 4, 1880.

IX.—Miscellaneous.

Copies of documents on Government records when to be granted.

64. Copies of documents on the Government records are often applied for as a means of supporting a claim either before or after the commencement of a suit against Government. Such copies should be furnished when the documents are of a public character and are pertinent to the case for which they are required. Copies of confidential communications, as those between Government and an officer or between one officer and another dealing with particular transactions or the rights or duties of individuals, should not in general be given. Vague and fishing applications for copies should be rejected. In cases of doubt the proper criterion to apply, is that of whether, if a copy is refused, the original may properly be called for by the Court, or whether such a call may properly be resisted according to the principles of Sections 123 and 124 of the Indian Evidence Act. When there is a right to inspect, it must be borne in mind that Section 76 of the same Act gives a right to a copy. Every copy taken, or its original, should be carefully considered by the Government Pleader, for whose perusal it will be submitted by the officer making the copy.

65. When documents in the charge of a Head of a Department are called for by a Court, he should consider whether they include communications made in official confidence, the production of which will be injurious to the public interest. To the production of such documents he should object, as falling within the principles of Section 124 of the Indian Evidence Act, and he will be careful to prevent his subordinates transgressing this rule upon summons directed to them personally, instead of to himself, in whom the custody of the documents is vested, and without whose orders subordinates are not at liberty to remove or otherwise deal with the documents of the department.

Production of documents against the public interest.

66. If it appears advisable to a Collector, or other officer, to intervene in any suit to which Government have not been made a party, or, if he shall deem it necessary to institute, or shall be called upon to defend, any miscellaneous civil proceeding on behalf of Government, the rules prescribed for regular suits in all their stages shall, *mutatis mutandis*, be deemed applicable, provided that in cases of emergency the Collector or other officer may act in anticipation of the orders of Government, but shall at once report his proceedings through the channel prescribed by the said rules.

Miscellaneous civil proceedings.

NOTE.—No. 66 of the Rules is of general applicability, and the name of Government or of any Government officer ought not to be used in any civil proceeding without a reference being first of all made under it, whether the costs of the proceeding will eventually fall on Government or not.—(*Leg. Rem. with G. R. No.* 2225, *Apr.* 27, 1880.)

67. Cases which are referred to the Civil Court under Section 15 of the Land Acquisition Act X. of 1870 need not, as a general rule, be referred under the foregoing rules to Government, through the Remembrancer of Legal Affairs for orders, but the Remembrancer of Legal Affairs may be consulted direct on any points that may arise in respect of such cases involving legal doubts or difficulties.

Land Acquisition Cases.

68. No suit, or other civil proceeding, is to be settled out of Court, or compromised in Court, by any officer of Government, without the express orders of Government, to be obtained through

Compromises.

the Remembrancer of Legal Affairs, after submitting full explanation of the course proposed to be adopted.

Correspondence and Government Resolutions to be deemed strictly confidential.

69. All correspondence and all Resolutions of Government on the subject of suits, or other civil proceedings, are to be regarded, by all officers of Government and by all pleaders into whose hands they may come, as *strictly confidential*. No public officer shall grant copies of any such correspondence or Government Resolution during the pendency of the suit or civil proceeding, or until after its final decision by the highest Court before which it is likely to be brought, for any reason whatever, and no such copies shall be granted at any time after such final decision without the previous sanction of the Head of the Department.

Legal Remembrancer's records.

70. The Remembrancer of Legal Affairs is to keep in his office complete records of all the correspondence connected with every suit or other civil proceeding in which Government, or any Government Officer, is concerned. Rules 5, 15, 31 and 36 have been framed with a view of facilitating this purpose, and where the rules do not expressly make provision to that effect, it is to be understood that all original correspondence on the subject of such suits or proceedings is eventually to be returned to the Remembrancer of Legal Affairs for record.

General powers of attorney.

71. Collectors and other officers, who are frequently concerned in suits, or other civil proceedings should furnish the Government Pleader in the High Court, and the Government Pleader of the District in which such suits, or other proceedings, originate, with a general power of attorney.

Copies of papers.

72. When the exhibits in an original suit, or other proceeding, are so numerous or so important as to necessitate a District Government Pleader's obtaining copies thereof for his own use, or for that of special counsel, and whenever a District Government Pleader for any reason whatever obtains copies of any such exhibit, he shall take care to have them legibly written on one side only of the paper, with a quarter margin, (the paper being of the ordinary

foolscap size in use in official correspondence) so that they may be afterwards used by counsel and others (as, for instance, for the purposes of Rules 27 and 35) in every subsequent stage of the case, and the expense of procuring fresh copies from time to time may be thus avoided.

It should be borne in mind that correct uncertified copies (which need not bear any Court-fee stamp) are for all purposes, except for filing in Court, as good and as useful as certified stamped copies, and copies of the latter kind should, therefore, only be obtained when they are required for filing in Court, or when these rules expressly state that certified copies should be procured.

In cases from the Kanarese Districts, Maratha or English translations must accompany all copies of Kanarese exhibits intended for the use of the Remembrancer of Legal Affairs or of the Government Pleader in the High Court.—*G. Rs. Nos.* 6451, *Nov.* 9, 1878; 6379, *Oct.* 20, 1879.

Rules regarding the Duties of the Law Officers of Government.

I.—The Advocate General.

3. The Commander-in-Chief, the Judge Advocate General of the Army, and, subject to the provisions of Rule 16, all Heads of Departments at the Presidency, whether such departments are under the Supreme or Local Government, have the right to require the Advocate General's opinion in any matter they may think it necessary to refer to him.

And as adviser of the Chief Officers of Government.

4. It is the duty of the Advocate General to advise the Legal Remembrancer whenever the latter deems it necessary, in any case or matter affecting the interests of Government to consult him.

May be consulted by the Legal Remembrancer.

5. It is the duty of the Advocate General to undertake any legal business within the range of an advocate's functions which Government may desire him to undertake in Bombay, and to represent Government in all actions and civil proceedings on the Original Side of the High Court.

Duties as Advocate.

Rules for Institution of Suits in Mofussil Courts.

6. It is the duty of the Advocate General—

(*a*) to appear on the Original Side of the High Court in every suit or other civil matter in which Government require his services, whoever the nominal party in whose behalf he is called on to appear may be (but he will not appear, without the requisition of Government, for any person except the Secretary of State for India in Council);

May be required to appear on behalf of Government Officers and others on the Original Side of the High Court.

(*b*) to appear, if required by Government, on their behalf in any original case, civil or criminal, which the High Court transfers from any other Court in the Presidency for trial before itself.

And in cases transferred for trial to the High Court.

7. In any case in which it is proposed to require the services of the Advocate General on behalf of some third person not directly identified in interest with Government, Government will determine whether the case is one in which they have such an interest as to render it advisable that it should be conducted on their behalf, and when it has been so determined, it is the duty of the Advocate General to afford his services as he would, if Government were directly a party to the case.

Requisition for his services in cases to which Government is not a party to be made by Government.

8. It is the duty of the Advocate General to prosecute as leading counsel in all original criminal cases tried before the High Court, in which Government direct that their law officers shall prosecute.

Prosecutes in criminal cases before the High Court when required by Government.

9. In ordinary original criminal cases tried before the High Court the Advocate General will exercise his discretion and prosecute as leading counsel, whenever he deems it desirable, in the interests of the public, that he should do so.

But in ordinary criminal cases exorcises his discretion.

10. The Advocate General has also to discharge, as occasion arises, the various duties imposed upon him by specific enactments of the English and Indian Legislatures.

Statutory duties.

II.—The Solicitor to Government.

12. The Solicitor to Government is bound to discharge all the ordinary duties of an Attorney and Solicitor to Government and to those officers of Government who are entitled to consult the Advocate General.

Ordinary duties.

13. It is his duty to conduct all such conveyancing business and to draft all such instruments and other legal documents as the Supreme or Local Government, or any authorized Government officer, may require.

Conveyancing and drafting to be done by him.

14. The Legal Remembrancer is entitled to the assistance of the Solicitor to Government in all matters in which the special knowledge of a solicitor may be of advantage.

Legal Remembrancer entitled to his assistance.

15. It is the duty of the Solicitor to Government to retain counsel in criminal cases which are prosecuted by the Law Officers of Government, obtaining copies of the documents from the Public Prosecutor, and also to instruct Government Counsel generally in all cases except those in which the performance of this duty is otherwise provided for, or in which Government or the officers entitled to consult the Advocate General instruct him direct; and his duties are in every respect co-extensive with those of the Advocate General, so far as the business of an attorney and solicitor is concerned.

Counsel to be retained and instructed by him.

16. Save in cases of emergency, references for the opinion or advice of the Advocate General must be made through the Solicitor to Government. Similar references may be made by Government and the officers entitled to consult the Advocate General for the opinion or advice of the Solicitor to Government himself; and in every case it is the duty of the officer making the reference to state whether the opinion or advice of the Advocate General, or of the Solicitor to Government, is required; but in any case in which his own opinion may be asked, and which, on perusal, he may consider to be of special difficulty or importance, the Solicitor to Government should obtain and forward the opinion of the Advocate General.

References for legal opinion or advice how to be made.

Rules for Institution of Suits in Mofussil Courts.

Procedure in case of such references.

17. The officers of Government requiring legal advice from either the Advocate General or the Solicitor to Government are responsible for placing before the Solicitor to Government all, and not more than all, the documents necessary for the proper consideration of the point on which an opinion or advice is required, and also for stating, as precisely as possible, the point on which the advice or opinion is required; but if the Solicitor to Government, in any case submitted either for his own advice or opinion, or for that of the Advocate General, finds that that real point has been missed, or incorrectly stated, or that the facts stated do not afford sufficient material for forming an opinion, it is his duty to return the case for re-submission in proper form, at the same time pointing out in what respect the reference is deficient.

Solicitor to Government is Public Prosecutor for Bombay.

18. The Solicitor to Government is also *ex-officio* Public Prosecutor for Bombay.

Duties as Public Prosecutor.

19. The duties of the Public Prosecutor for Bombay are—

(1) to prepare and watch prosecutions in trials before the High Court, to draw the briefs, and to take care that the necessary witnesses are in attendance;

(2) to communicate with, and advise Magistrates, whether in Bombay or in the Mofussil, in respect to cases committed, or to be committed, for trial in the High Court;

(3) to conduct prosecutions, under the provisions of the Criminal Procedure Code, before the High Court, subject to the Advocate General, or other counsel who appears at the time of trial;

(4) to retain counsel for the prosecution at his discretion, in any case committed for trial before the High Court, in which copy of the record is forwarded to him by the Clerk of the Crown;

(5) to originate or assume such prosecutions as he may be directed to originate or assume by Government, or by any Judge, or Magistrate, or such as, by reason of there being no private person, or public body, on whom the duty of originating them should more properly fall, or on any other account, he shall, in his

discretion, consider should be originated or assumed by him in his public capacity;

(6) to bring to the notice of Government any special circumstances connected with any trial which seem to him to require the attention of Government.

III.—Remembrancer of Legal Affairs.

21. It is the duty of the Remembrancer of Legal Affairs to superintend and advise on the conduct of all litigation arising originally in the Mofussil in which the Government or Government officers are concerned or interested, in accordance with the rules prescribed in this behalf.

Duties in respect of litigation in the Mofussil.

22. All the Government Pleaders throughout the Presidency, including the Government Pleader in the High Court, and all Public Prosecutors except the Prosecutor of Bombay are under his direct control and supervision, and all communications concerning the law business, or the Subordinate Law Officers of Government in the Mofussil, are to be made to Government through him.

Control of Government Pleaders vested in him.

23. The Remembrancer of Legal Affairs is appointed under Section 492 of the Criminal Procedure Code *ex-officio* Public Prosecutor for the Presidency of Bombay, except Sind and the City of Bombay. He will appear personally only in such cases as he deems it desirable that he should himself prosecute, or as the Government from time to time direct him to prosecute.

Is *ex-officio* Public Prosecutor under the Criminal Procedure Code.

25. Except as is otherwise provided in Rules 15 and 19, the employment of special counsel, when necessary, on behalf of Government in any case, whether civil or criminal, which arises originally in the Mofussil, and the settlement of their fees, is also a part of the duties of the Remembrancer of Legal Affairs; and, subject to the orders of Government, he is to exercise a control over all expenditure incurred on account of law charges, in connection with both civil and criminal cases in, or arising in, the Mofussil.

To engage special counsel, when necessary, and settle their fees.

Rules for Institution of Suits in Mofussil Courts.

Procedure when special counsel has to be employed.

26. Government Pleaders, or local officers, who desire to engage special counsel for any case should communicate with the Remembrancer of Legal Affairs *before* doing so, informing him, in criminal cases, of the nature of the case, and of the evidence to be brought forward, and stating, in every case, when and where the hearing of trial will take place, how long it is likely to last, and what pleader or other counsel they wish to employ, and at what rate they propose to remunerate him. If there is not time for this communication to be made before the date fixed, or likely to be fixed, for the hearing or trial of the case, the Court or Magistrate should be asked to adjourn it, or to fix the date in the first instance at a sufficient distance of time to enable the officer concerned to obtain sanction for the employment of special counsel. The Remembrancer of Legal Affairs, if he thinks the case a fit one for the employment of special counsel, will submit the application for the orders of Government, but in emergent cases may act in anticipation of such orders.

Duties as Government Advisor.

27. The Remembrancer of Legal Affairs is bound to advise Government on all legal questions in connection with the administration of public affairs, or arising out of the acts of Government officers or public servants in the Mofussil which may be referred to him by Government. This duty extends to Government business of all kinds, and in all departments, whether under the Supreme or Local Government.

Procedure in respect of reference to him for opinion or advice.

28. Rule 17, which applies to references for the advice or opinion of the Solicitor to Government, or of the Advocate General is to be held applicable, as far as may be, to all such references to the Remembrancer of Legal Affairs; but the Remembrancer of Legal Affairs will, in this as in all other branches of his duties, himself ordinarily perform all the usual work of a solicitor.

Direct references by Government officers to him for opinion or advice not ordinarily permitted.

29. Heads of Departments in the Mofussil may make direct references to the Remembrancer of Legal Affairs for advice or opinion only in respect of suits or other civil proceedings which are

actually pending, and in which Government is concerned or interested, and of criminal proceedings which are actually pending. References on general questions, or in regard to proceedings other than the above, should be submitted to Government, who will call for the Remembrancer of Legal Affairs' report, or not, as they deem fit.

In the case of reference to the High Court under the Stamp Act, the Remembrancer of Legal Affairs will ordinarily decide whether or not the Government Pleader in the High Court need appear on behalf of Government. Whenever he has any doubt, he should take the special orders of Government.

Municipalities not ordinarily entitled to his advice.

30. Municipalities must, as a general rule, be left to defend the legality of their own proceedings, and are not entitled to the advice of the Government Law Officers. But in cases of special importance or difficulty, a reference may be made to Government to obtain the opinion or advice of the Remembrancer of Legal Affairs for the guidance of Municipalities in their proceedings, or in the defence of actions which have been brought against them, or with which they are threatened.

Duties in respect of appeals against acquittals in criminal cases.

31. It is also the duty of the Remembrancer of Legal Affairs to advise Government, in accordance with the rules* prescribed in this behalf in Government Resolution No. 6889, dated 17th November 1876, Judicial Department, in the matter of all proposals to appeal, under Section 272 of the Criminal Procedure Code, against the acquittal of accused persons.

* The following are the rules referred to :—

I. Every proposal to appeal under Section 272 (417 Act X. of 1882) of the Criminal Procedure Code must be forwarded by the officer making it to the Head of his Department, who, if he concurs in it, shall submit it with his own opinion to Government, through the Legal Remembrancer.

II. The Legal Remembrancer, after calling for all information or papers that he may deem necessary to enable him to arrive at a correct opinion shall forward the correspondence to Government, together with a report, stating his opinion, and, if he advises an appeal being made, the principal grounds on which he suggests its being based.

III. If Government sanction the appeal copies of the correspondence and of the Legal Remembrancer's report will be forwarded direct to the Government Pleader in the High Court from the Secretariat, with a copy of the Government Resolution empowering him to file the appeal.

IV. The appeal will then be drawn up by the Government Pleader in accordance with the orders of the Court, and after consultation with the special counsel, if any, whom Government authorize him to retain for the case.

Rules for Institution of Suits in Mofussil Courts.

Government Pleaders and Public Prosecutors.

"Government Pleader" defined.

37. The term "Government Pleader" includes—

(1) the Government Pleader in the High Court;

(2) District Government Pleaders; and

(3) Subordinate Government Pleaders (of whom one will be nominated for every Subordinate Judge's Court or Small Cause Court not situated at the head-quarters of a District Government Pleader).

"Public Prosecutor" defined.

The term "Public Prosecutor" means any person appointed by Government under Section 492 of the Criminal Procedure Code to be Public Prosecutor for a district or a division of a district or for a specified class of cases in a district or division of a district; and it also includes the Government Pleader in the High Court for the purposes mentioned in Rule 47 of these Rules, and any person appointed by a District or Sub-divisional Magistrate for the purposes mentioned in Rule 50 of these Rules.

NOTE.—See the definition in Act. X. of 1882.

Ordinary duties of Government Pleaders.

45. It is the duty of Government Pleaders to appear on behalf of Government, or of any Government Officer, in any suit or other civil proceeding to which Government are a party, or the institution or defence of which is

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V. Neither the grounds of appeal nor the arguments in support of the appeal at the hearing need be limited to those stated in the Legal Remembrancer's opinion. The Government Pleader or other counsel will be at liberty to exercise his own discretion as to the manner in which the appeal should be conducted, subject only to any special reservations which may be made in the Government Resolutions sanctioning the appeal.

VI. As soon as Government have sanctioned the institution of an appeal it will be the duty of the Legal Remembrancer and of the local officer who proposed the appeal to forward to the Government Pleader direct without delay all the material papers in their possession relating to the case.

VII. As soon as the appeal has been decided the Government Pleader will inform the Legal Remembrancer of the result. If a written judgment is recorded by the Court he will obtain with as little delay as possible two copies of it, and forward one to the Legal Remembrancer and one with the papers to the officer who proposed the appeal.

VIII. The result of the appeal will be especially reported to Government by the Legal Remembrancer only in such cases as appear to him to be important. As a general rule it will suffice if the different cases and their results are mentioned in his annual report to Government. The officer who proposed the appeal need not communicate its result to Government.

undertaken by Government, or in any suit or other civil matter, in which Government requires their services, whoever the nominal party on whose behalf they are called on to appear may be, if Government determine that the case is one in which they have such an interest as to render it advisable that it should be conducted on their behalf.

Retaining and instructing of special counsel for Mofussil cases.

46. Whenever special counsel is employed by the Remembrancer of Legal Affairs, under Rule 25, in Bombay, for any case to be heard either in Bombay or in the Mofussil, the Government Pleader in the High Court shall take (under instructions from the Remembrancer of Legal Affairs) the usual steps for retaining such counsel. The counsel's brief will be prepared, for any case to be tried in Bombay, by the Government Pleader in the High Court, and for any case to be tried in the Mofussil by the Government Pleader of the district, or by the Prosecuting Pleader of the district or division in which the case is to be tried; and, in the latter case, the brief, when prepared, will be forwarded by the District Government Pleader, or the Prosecuting Pleader, to the Government Pleader in the High Court for submittal to the counsel.

Duties of the Government Pleader in the High Court in criminal cases.

47. The Government Pleader in the High Court is appointed Public Prosecutor for the purpose of presenting appeals to the High Court in cases of acquittal on behalf of Government under Section 417 of the Criminal Procedure Code, and for the purpose of appearing for the prosecution in criminal appeals heard before the High Court under Section 423 of the said Code, and for the Crown in other criminal cases which come before the High Court on its Appellate Side under the provisions of the Criminal procedure Code.

The Government Pleader in the High Court is empowered by Government under Section 422 of the Criminal Procedure Code to receive notices of criminal appeals to be heard before that Court.

48. The Government Pleader in the High Court, as Public Prosecutor on the appellate side of that Court, must appear for the prosecution, if called upon, in any criminal case from the

Mofussil which comes before that Court on that side. He will ordinarily so appear—

(*a*) In every case submitted to the High Court under Section 374 of the Criminal Procedure Code for confirmation; and

(*b*) In every appeal against an acquittal; and

(*c*) In every case submitted to the High Court under Section 307 of the Criminal Procedure Code, and in every appeal against a conviction heard by it under Section 423 of the said Code, if in such case or appeal the accused person (or when there are several accused persons any one of them) is represented by Counsel, whether a Barrister or a Pleader; and

(*d*) In any criminal case in which he may be specially instructed to appear by the Magistrate of a District, or by the Remembrancer of Legal Affairs; and

(*e*) In any criminal case in which the High Court or a Division Court desires him to appear, or intimates its opinion that he ought to appear.

Duties of District Government Pleaders and Public Prosecutors in criminal cases.

49. Notices of commitments and appeals under Sections 218 and 422 of the Criminal Procedure Code will be given to the District Government Pleaders and Public Prosecutors, who will ordinarily conduct the prosecution in every trial before Courts of Session in accordance with Section 270 of the Criminal Procedure Code, and appear for the prosecution at the hearing of any appeal before those Courts when counsel, whether a barrister or pleader, appears for the appellant, or when they are specially instructed by the Magistrate of the district under Section 492 of the Code. When so required by the Magistrate of the district, or by the Remembrancer of Legal Affairs, it is their duty also to conduct the prosecution in any trial before a Magistrate.

Appointment and remuneration of special prosecutors under Section 492 of the Criminal Procedure Code.

50. When, under Section 492 of the Criminal Procedure Code, a Magistrate of the district or subject to his control a Sub-divisional Magistrate appoints any person in the absence of the Public Prosecutor, or when no Public Prosecutor has been appointed, to be Public Prosecutor for the purpose of conducting the prosecution in any trial before the

Court of Sessions, such person shall be entitled to the same remuneration as would be payable under Rule 41 of these Rules.

But no such person shall be appointed by a Magistrate of the district without the concurrence of the Remembrancer of Legal Affairs, and if, for special reasons, a higher rate of remuneration than the above is deemed necessary for the person whom it is proposed to appoint, the sanction of Government must be obtained, through the Remembrancer of Legal Affairs, before any liability is incurred.

Duty of Government Pleader and Prosecuting Pleader when the Public Prosecutor or special counsel appears.

51. When the Public Prosecutor for the Presidency, or special counsel, appears for the prosecution in any case before the High Court, or any Sessions Court, the Government Pleader or Prosecuting Pleader will appear also and assist, or instruct the Public Prosecutor or special counsel, as may be necessary.

Government Pleaders in the High Court may be required to appear in the Mofussil.

52. The duties of the Government Pleader in the High Court are ordinarily restricted to that Court, but it is his duty, also, whenever his services can be spared without inconvenience to that Court, and the Remembrancer of Legal Affairs so requires, to appear in any case, whether civil or criminal, in any Court in the Mofussil.

District Government Pleaders and Public Prosecutors may be required to proceed to Bombay, or to appear in other Courts than those at the head-quarters.

53. Similarly District Government Pleaders' duties are ordinarily restricted to the Courts at the head-quarters of the district for which they are appointed, and Public Prosecutors' duties are ordinarily restricted to the Sessions Courts to which they are respectively appointed; but when so required by the Collector or Magistrate of the district, or by the Remembrancer of Legal Affairs, they will appear in any case in any Court in the said district, or proceed to Bombay to instruct counsel, or to assist at the hearing or trial of any case in the High Court, or for any other such purpose; provided that in the case of Public Prosecutors such requisitions shall be confined to criminal cases.

Rules for Institution of Suits in Mofussil Courts.

Duties of Subordinate Government Pleaders.

54. The duties of Subordinate Government Pleaders are limited to appearing on behalf of Government in the Courts for which they are respectively appointed in any suit or other civil matter in which the District Government Pleader would appear if such suit or matter arose in any Court at the head-quarters of the district. They are to be subordinate to the respective District Government Pleaders, and whenever a District Government Pleader appears in any Court in which there is a Subordinate Government Pleader, the latter will appear with him as junior pleader.

Duties of Government Pleader in the High Court as adviser of Government Officers.

55. It is the duty of the Government Pleader in the High Court to advise District Officers only in respect of any proceedings, whether civil or criminal, which he has or may have to conduct on behalf of Government, but his duties as hereinbefore described extend to Government business in all its departments, whether under the Supreme or Local Government.

District Government Pleaders' duties as advisers of Government Officers.

56. It is the duty of the District Government Pleaders to advise all local officers not only in respect of any proceedings, whether civil or criminal, which they may have to conduct on behalf of Government or of any such officer, but also, to the best of their ability, on all legal matters which any such officer may refer to them concerning any Government business of any kind or in any department, whether such department be under the Supreme or Local Government.—*Govt. Notifications No.* 5756, *Sept.* 15, 1882, *and No.* 1578, *Mar.* 6, 1883.

17. **Copies of documents.**—It is the wish of Government that no needless restrictions should be placed on the right of inspection of public documents, which are applied for by parties to suits.

It would not be possible to define precisely what particular class of documents should be allowed to be inspected and copied, but in withholding permission the officer in charge of the records

should be guided mainly by the consideration whether or not the public interests would suffer by the disclosure. Under Section 162 of the Evidence Act, the head of the department, and not the Court, is made the judge, whether a public document is to be withheld on the ground that it relates to affairs of State. The Collector should therefore be careful, before allowing inspection or granting copies of documents from his records, to ascertain that the public interests are not likely to suffer by the disclosure. And in cases in which, though compelled to bring a document into Court, he considers it would be detrimental to the public service to produce it, he should attend personally to state his objection.—*G. R. No.* 5487, *Oct.* 3, 1873.

18. **Pauper Suits.**—

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19. The only privilege of a person who is allowed by a Court to institute a suit *in formâ pauperis* is, that he is not liable for any Court fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit.

There is no law which exempts him from paying the stamp duty on any document which requires to be stamped under the provisions of the General Stamp Act.—*G. R. No.* 3098, *June* 19, 1878.

20. **Vakilatnámás.**—Vakilatnámás given by Collectors when such documents are necessary, are liable to the prescribed Court fee, but when Government Pleaders appear for Government (and not simply for a public officer) it is not the practice for them to file in Court any vakilatnáma. They are the recognized agents of Government within the meaning of Section 417 of the new Civil Procedure Code, and the Courts are bound to take judicial notice of their appointment, so that no vakilatnámá is necessary.

In pauper inquiries (Secs. 408, 411, 414, Civil Procedure Code) vakilatnámás are not necessary. It is enough if the Collector instruct the Government Vakil to appear.

But even if it were held that Government Pleaders are not recognized agents of Government within the meaning of Section 417, most of the Government Pleaders are furnished with a general vakilatnámá from the Collector, under Clause 4, Section 47, Regulation II. of 1827, a duplicate of which is deposited in the District

Court, and when so furnished they can appear in pauper inquiries without any fresh vakilatnáma in each case on the authority of the said regulation.—*G. R. No.* 2436, *May* 11, 1878.

21. **Fees.**—Government Pleaders are not entitled to fees for trivial miscellaneous duties, such as obtaining copies or searching for original papers for Government officers.—*G. R. No.* 4985, *Aug.* 15, 1877.